IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5408 OF 2004

Babu @ John Angel David ... Applicant

versus

State of Maharashtra ... Respondent

...

Mr. S.Y. Katkade, for the Applicant.

Mr. K.V. Saste, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

9th December 2004

P.C.:

. Heard Counsel for the parties. The Court below issued non-bailable warrant against the Applicant, which was duly executed. After the arrest, the Applicant was produced before the trial Court when the Applicant applied for bail. The Court below by order dated 1st December 2004 has rejected the prayer for bail on the ground that the Applicant did not attend the Court for about 2 and half years after release on bail. Indeed, the fact recorded by the Court below is

substantiated from the record. However, the Applicant has offered explanation which, perhaps, has not been given due consideration by the Court below. According to the Applicant, the Applicant shifted his place of residence from Colaba to Nala Sopara in the year 2001 and he had no information about the dates of hearing. It is only upon arrest pursuant to the non-bailable warrant, the Applicant became aware about the fact that he did not remain present on the dates notified by the Court. The explanation seems to be plausible, though the act of the Applicant of being casual in not making enquiry for a period of two and half years cannot be appreciated. The fact that the Applicant has shifted to Nala Sopara has been disclosed by the surety who appeared in Court pursuant to the notice received from the trial Court. The learned A.P.P. fairly accepts that there are no antecedents in respect of this Applicant. The Applicant is rendering services to Church presently at Nala Sopara. In my opinion, although the trial Court has expedited the hearing of the case, it would be appropriate to enlarge the Applicant on bail, because the ground on which the Applicant came to be released on bail by the trial Court vide order

dated 29th July 1999 is that there is no material on record to show that the Applicant assaulted the deceased and caused his death. Moreover, the Applicant's case seems to be that he was present in the hospital to attend to his friend who had met with an accident three days earlier. Be that as it may, even though the Applicant can be said to have jumped the condition of bail of requiring him to regularly attend the trial; however, in the interest of justice, the Applicant can be given one opportunity on the assurance given by him through his Counsel that in future, he will not miss out even a single date of hearing of the trial. It is made clear that in future, if there is any one default committed by the Applicant for whatever reason to attend the trial, it will be open to the trial Court to take recourse against the Applicant in accordance with law and in which case, no further indulgence will be shown to the Applicant. Besides, the Applicant assures through his Counsel that he shall extend full co-operation for early disposal of the trial. In case the trial Court is of the opinion that the Applicant is responsible for delay of the trial hereafter, that fact be recorded in the roznama, which can be taken into account as when occasion

arises. Accordingly, this Application is allowed on the following terms.

(a) The Applicant is enlarged on bail in connection with CR.No. 95/1999 registered with J.J. Marg Police Station (Sessions Case No. 934 of 1999) on the same terms and conditions on which he was released by the trial Court on the earlier occasion vide order dated 20th July 1999, in addition to the conditions referred to above.

. This application stands disposed of on the above terms.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)